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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960
No. 806

LIONEL RICHMAN,

Petitioner in Pro. Per.;

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition for Writ of Certiorari to the Appellate Department of the Superior Court of the State of California in and for the County of San Bernardino.

LIONEL RICHMAN,
1250 Wilshire Boulevard,
Los Angeles 17, California
In Pro. Per.

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Petition for Writ of Certiorari to the Appellate Department of the Superior Court of the State of California in and for the County of San Bernardino.

Petitioner, Lionel Richman, respectfully prays for a writ of certiorari to the Appellate Department of the Superior Court of the State of California, in and for the County of San Bernardino, (hereinafter referred to as "Appellate Department") in order to review its judgment affirming a judgment of the Justice Court, Redlands Judicial District, County of San Bernardino, State of California, adjudging petitioner guilty of a violation of section 6225 of the Redlands Ordinance Code and sentencing petitioner to pay a fine of five dollars.

Opinions Below.

There was no written opinion in the trial court.

The opinion of the Appellate Department is not reported, but appears in the certified record at page 5. The opinion merely indicates the judgment of conviction is affirmed.

Grounds on Which the Jurisdiction of This Court Is Invoked.

1. The date of the judgment sought to be reviewed and the time of its entry is January 14, 1960 [Certified record, page 4].

2. No request was made for a rehearing and an application to stay issuance of remittitur was made on January 27, 1960 and granted on January 28, 1960 [Certified record, page 2].

3. The statutory provisions believed to confer jurisdiction on this court to review the judgment in question by writ of certiorari are 28 U. S. C. 1257(3) and Rule 22(1) of this court.[1]

Questions Presented for Review.

1. Do the penalty sections of the Redlands Ordinance Code, and specifically sections 6244 and 6246 deprive petitioner of his liberty without due process of law because it raises a conclusive presumption of guilt upon the mere issuance of a citation by a police officer and constitutes a form of bill of attainder by convicting petitioner by legislative fiat of a violation of the Redlands Ordinance Code based upon the mere issuance by a police officer of a citation?

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[1]The Appellate Department is the highest state court available to petitioner (California Constitution, Article VI, section 5; *Roth v. United States*, 354 U. S. 476, 481, footnote 6).

2. Do the penalty sections of the Redlands Ordinance Code, and specifically sections 6244 and 6246, deprive petitioner of equal protection of the law in that it arbitrarily creates a special class of traffic violators for whom there is a conclusive presumption of guilt by the mere issuance of a citation by a police officer?

Constitutional Provision and Ordinances Involved.

1. Section 1 of the Fourteenth Amendment to the United States Constitution provides in part ". . . nor shall any state deprive any person of . . . liberty . . . without due process of law."

2. The Fourteenth Amendment to the United States Constitution provides in part that all persons shall be entitled to equal protection of the law.

3. The City of Redlands Ordinance Code, which this case involves, provides:

"Section 6244 PAYMENT BY VIOLATOR: Time and Amount—Any operator or owner of a vehicle for which a citation has been issued shall pay a penalty in the amount designated by the following schedule in full satisfaction of such violation:

Schedule

If paid within	*Amount*
24 hours	50¢
10 days	$1.00
30 days	$5.00"

"Section 6246 NON-PAYMENT: The failure of such owner or operator to pay said penalty within thirty days (30 days) shall subject such owner or operator to the misdemeanor penalty provided for the violations of the provisions of this Code."

Statement of the Case.

Petitioner was cited by a complaint issued out of the Justice Court, Redlands Judicial District, County of San Bernardino, State of California, charging violation of Section 6225 of the Redlands City Ordinance Code. Petitioner duly moved the court to dismiss the complaint upon the ground that Article 622 and the penalty sections thereunder of the Riverside Ordinance Code were unconstitutional and that the complaint based thereon was likewise void as being unconstitutional in that said provisions deprived petitioner of liberty without due process of law, denied petitioner equal protection of the law and constituted an illegal bill of attainder.

The motion to dismiss was denied and petitioner entered a plea of not guilty. Thereafter the matter proceeded to trial and petitioner convicted and a fine of five dollars imposed. From such judgment petitioner appealed to the Appellate Department of the Superior Court, which affirmed such conviction without opinion.

Preliminary Statement.

It is case book law that a criminal statute must be constitutional in all of its phases, including its definition, its charges and its penalty. A defect in any of these phases nullifies the entire ordinance. Should the penalty provisions be unconstitutional the entire ordinance fails since it would no longer be a criminal ordinance.

Ordinance Provisions Involved.

"Section 6244. PAYMENT BY VIOLATOR: Time and Amount—Any operator or owner of a veicle for which a citation has been issued shall pay a penalty in the amount designated by the following schedule in full satisfaction of such violation:

Schedule

If paid within	*Amount*
24 hours	50¢
10 days	$1.00
30 days	$5.00."

"Sec. 6246. NON-PAYMENT: The failure of such owner or operator to pay said penalty within thirty days (30 days) shall subject such owner or operator to the misdemeanor penalty provided for the violations of the provisions of this Code. (Ord. 1097)"

The Ordinance Deprives Petitioner of Due Process of Law.

Section 6244 provides for the payment of a penalty within a certain fixed period after the issuance of the citation. Section 6246 further provides that the failure to pay such penalty within thirty days shall subject the party charged to prosecution for an additional misdemeanor. Under these two sections there is a conclusive presumption of guilt from the mere issuance of the citation with a compounded penalty for failure to pay the penalty forthwith.

These two sections do not relate to the posting of bail and we are not required to discuss the validity of a pyra-

midical system of bail. It relates solely to penalties. Thus, it is clear that if a person who is issued a citation desires to enter a plea of not guilty and proceed to trial he is subjected to a greater penalty than when he passively pays the sum demanded.

Appellant recognizes the power of any legislative body to provide for presumptions. However, the legislature may only provide that certain facts shall be presumptive evidence of other facts if there is a natural and rational evidentiary relation between the facts provided and those presumed.

> "The due process clause, however, forbids the introduction into the law of a fiction under the cloak of a presumption that would contradict the presumption of innocence and work a 'wrong contrary to real truth and substance of the thing' by imposing on the accused a burden that 'is not justified in the light of experience as to the circumstances of life as we know them.'"
>
> *People v. Scott*, 24 Cal. 2d 774.

Such a presumption would clearly be a deprivation of due process of law and would violate the constitutional provisions against deprivation of due process of law in criminal proceedings.

> United States Constitution, Amend. XIV, Sec. 1;
> Constitution of the State of California, Art. I, Sec. 13.

As has been uniformly held by our United States Supreme Court, a presumption which is conclusive of the

rights of the persons against whom it is raised violates the due process clause.

Bailey v. Alabama, 219 U. S. 219;
Manley v. Georgia, 279 U. S. 1, 7;
Morrison v. California, 291 U. S. 82.

Since Section 6244 raises a conclusive presumption of guilt by mere issuance of the citation and further penalizes the petitioner if he insists on pleading not guilty by inflicting a greater penalty upon him, he is clearly then deprived of due process of law.

The Ordinance Deprives Appellant of Equal Protection of the Law.

Petitioner is guaranteed equal protection of the law both under the Constitution of the United States and the Constitution of the State of California.

United States Constitution, Amend. XIV;
Constitution of the State of California, Art. I, Sec. 11.

This guarantee is violated where the rights of petitioner are "presumed" away by an action of the legislature which arbitrarily makes one fact proof of another.

A state may prescribe the evidence which shall be received and the effect which shall be given it; proof of one fact, or of several facts taken collectively, may be made *prima facie* evidence of another fact, so long as it is not a mere arbitrary mandate and does not discriminate invidiously between different persons in substantially the same situations.

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 81.

It is difficult to understand upon what basis the mere issuance of a parking citation in the City of Redlands shall constitute a conclusive presumption of guilt while similar issuances of citations in motor vehicle cases do not.

Further, it is clear from the penalty provisions of the Redlands Ordinance Code set forth above that one who seeks to test the validity of the arrest is forced to pay a greater penalty since the court may take judicial notice of the fact it is impossible to appear upon the date a citation is issued, enter a plea of not guilty, demand a jury trial, start the trial forthwith, and complete it all within twenty-four hours of the time the citation is issued. It requires that such a defendant pay a greater penalty for exercising his constitutional right to plead not guilty and demand a trial before a jury of his peers.

Discriminatory law enforcement which is intentional and purposeful constitutes a denial of the equal protection of the laws.

People v. Winters, 171 A. C. A. 934, 941.

A variance in terms of punishment between equally guilty persons is wholly void.

People v. Lewis, 13 Cal. 2d 280;
Pace v. Alabama, 106 U. S. 583;
Skinner v. Oklahoma, 316 U. S. 535.

The Challenged Provisions Further Violate Due Process of Law Since They Constitute a Form of Bill of Attainder.

Article I, Section 16 of the Constitution of California and Article I, Section 10 of he United States Constitution take away from the state legislature the power to pass a bill of attainder. These clauses prohibit all legislative acts, no matter what their form, that apply either to

named individuals or to ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial.

United States v. Lovett, 328 U. S. 303, 315;
Ex parte Garland, 4 Wall. 333, 377;
Cummings v. Missouri, 4 Wall. 277, 323;
Klinger v. Missouri, 13 Wall. 257;
Pierce v. Carskadon, 16 Wall. 234, 239.

Since the challenged provisions of the ordinance clearly take away from the court the power to inflict penalties but inflict them by legislative fiat the city council of the city of Redlands has attained your petitioner and all other members of the same class who receive parking citations and have thereby deprived your petitioner of his constitutional rights.

Conclusion.

Petitioner is well aware of the overwhelming work load of this Honorable Court and has a deep and abiding respect for the work of this court. Petitioner hopes that the court will understand that this matter is prosecuted not out of any sense of frivolity, since it would have been so much cheaper and easier for petitioner to have ignored what he considered the violation of his basic personal rights as a citizen and paid the nominal sum involved. However, it is petitioner's feeling, which he strongly and earnestly urges to this Honorable Court, that there is no price tag upon the Constitution of the United States. The average citizen comes in contact with the criminal law only through the traffic courts. While the unconstitutional encroachment upon his personal rights may be slight, it is here being inflicted upon the entire population of a municipality.

The premise of the City of Redlands that it is too much of a nuisance to grant a trial to one charged with a minor traffic offense is the traditional contention of over-zealous police authorities. Historically, the police authorities have always felt that since they never made anything but lawful arrests, the requirement of trial was merely a delaying action.

The requirement of equality before the law means just that. There are not various forms of equality before the law.

In some ways the action of the City of Redlands may be likened to the political satire by the late George Orwell, "ANIMAL FARM". In that tale the animals had thrown off the yoke of Farmer Jones and had established a government of the proletariat. They had established certain "rules of animalism", one of which proudly proclaimed "All Animals Are Created Equal".

Subsequently, the pigs being the more cunning of the animals commenced the establishment of a dictatorship of the pigs, and one day, when the animals assembled in the farm yard to read the rules of animalism, it appeared that one of them had been altered. It now read: "All Animals Are Created Equal, Except Some Are Created More Equal Than Others."

For these reasons, therefore, and since the ordinance in question affects a vast part of the population, it is respectfully submitted that a substantial federal question exists, and the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

LIONEL RICHMAN,

In Pro. Per.

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vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Reply to Petition for Writ of Certiorari to the Appellate Department of the Superior Court of the State of California in and for the County of San Bernardino.

This brief replies to contentions of a petition for certiorari to review a criminal case which arose in the County of San Bernardino, California. Petitioner was convicted in the Justice Court, Redlands Judicial District, of violating the parking meter ordinance of the City of Redlands. The court imposed a fine of five dollars ($5.00). Appeal was taken to the Appellate Department of the Superior Court in and for the State of California. In a memorandum opinion issued January 14, 1960, the judgment was affirmed. The petition for review of this opinion was filed on March 21, 1960.

Opinions Below.

The memorandum opinion of the Appellate Department of the Superior Court affirms the judgment of the trial court.

Questions Presented for Review.

1. Do Sections 6244 and 6246 of the Redlands Code raise a presumption which deprives petitioner of his liberty without due process of law, equal protection, or constitute a bill of attainder?

2. Do Sections 6244 and 6246 deprive petitioner of equal protection of the law?

Ordinances Applied to Petitioner by Trial Court.

1. "Section 6225: NONPAYMENT OF METER. It shall be unlawful between the hours of 9:00 a.m. and 6:00 p.m. on any day excepting Sundays and Holidays for any person to cause, allow, permit, or suffer any vehicle registered in his name or operated or controlled by him to be upon any street within a parking meter zone in any space adjacent to which a parking meter is installed at any time during which the meter is showing a signal indicating that such space is illegally in use (other than such time as may be absolutely necessary in entering and leaving such space to operate the meter)."

2. "Section 0311 VIOLATION; MISDEMEANOR. Any person who violates or willfully fails to comply with any provision of this code is guilty of a misdemeanor."

3. "Section 0313. PENALTY. Any person convicted of a misdemeanor under the provisions of this Code (unless otherwise provided herein) shall be punishable by a fine of not more than five hundred dollars ($500.00) or

by imprisonment in the City Jail or in the San Bernardino County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

Statement of the Case.

The petitioner, Lionel Richman, was accused of violating Section 6225 of the Redlands Parking Ordinance in a complaint filed in Justice Court of the Redlands Judicial District. It alleges as follows:

> "That said Lionel Richman . . . did willfully and unlawfully park that certain automobile, State License 0108980, on a public street in the City of Redlands, to wit: State Street in violation of a parking meter ordinance of the City of Redlands."

The trial court's minute order states that Richman appeared and was represented by his counsel, Lewis Garrett, at the time of arraignment. A true copy of the complaint was delivered to the defendant and read to him; he was asked whether he pleaded guilty or not guilty to the complaint. Without pleading, he made a written motion to dismiss the complaint on the grounds that Sections 6244, 6245, and 6246 of the Redlands Ordinance Code are contrary to the Fourteenth Amendment of the United States Constitution and Article 1, Section 13 of the Constitution of the State of California.

The motion was denied following argument by counsel and review of the points and authorities. Richman entered a plea of not guilty, waived a jury, and requested a court trial. He asked the court to consider the entire record, including the police report, communications and other information as evidence upon which to reach its verdict. The court found that an Austin Healy automo-

bile owned by Lionel Richman was parked overtime on State Street in the City of Redlands on February 28, 1959.

Richman was found guilty of parking in violation of Section 6225 of the Redlands Ordinance Code. The Court pronounced judgment immediately at Richman's request, and fixed a fine of five dollars.

Ordinance Does Not Deprive Petitioner of Due Process or Equal Protection of the Law nor Is It a Bill of Attainder.

The evidence that Petitioner parked his automobile in a metered space longer than the period allowed by the Redlands ordinance is undisputed. The court found the allegations of the complaint are true and entered judgment that the petitioner is guilty of violating Section 6225.

He contends that his conviction under this section is improper because the Redlands Code contains separate provisions which allow overtime parkers to deposit or mail sums to the city and waive court appearance. These sections, which the record shows were not alleged in the complaint or applied to petitioner by the trial court, are as follows:

> "Section 6244. PAYMENT BY VIOLATOR: Time and Amount—Any operator or owner of a vehicle for which a citation has been issued shall pay a penalty in the amount designated by the following schedule in full satisfaction of such violation:
>
> *Schedule*
>
> | *If Paid Within* | *Amount* |
> |---|---|
> | 24 hours | 50c |
> | 10 days | $1.00 |
> | 30 days | $5.00 |

"Section 6245. MANNER OF PAYMENT: Said payment may be made through receptacles designated for such purpose located within the metered area of the city or in person to the City Treasurer, City Hall, Vine and Cajon Streets, Redlands, or by mailing said penalty to above City Treasurer."

"Section 6246. NON PAYMENT: The failure of such owner or operator to pay said penalty within thirty days (30 days) shall subject such owner or operator to the misdemeanor penalty provided for the violations of the provisions of this code."

According to the petitioner, this procedure establishes a conclusive presumption of guilt from the mere issuance of a citation and that consequently his conviction of violating Section 6225 is contrary to the Fourteenth Amendment. (United States Constitution, 14th Amendment, Sec. 1) and a bill of attainder (United States Constitution Art. I, Sec. 10).

The judgment was based upon uncontradicted evidence. The court did not invoke any presumption of law. For this reason, petitioner's claim that his conviction is based upon an unconstitutional presumption is without merit. The constitutionality of sections other than the specific one under which he was convicted and sentenced is irrelevent in the present case.

One of petitioner's principal arguments is that Section 6246 allows the deposit of sums by violators of petty parking meter regulations, thereby inducing them to waive their right to arraignment and trial. Serving the convenience of persons who have parked overtime is plainly the purpose of the provision. This intention is even more clearly shown by Section 6245, which allows the mailing

or deposit of the charge at a city office. Such a mailing or deposit is not a penalty imposed for a violation of the Redlands ordinance.

The punishment for all misdemeanors is set forth in Sections 0311 and 0313, which provide:

> "Section 0311. VIOLATION: MISDEMEANOR. Any person who violates or willfully fails to comply with any provision of this Code is guilty of a misdemeanor."
>
> "Section 0313. PENALTY. Any person convicted of a misdemeanor under the provisions of this Code (unless otherwise provided herein) shall be punishable by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the City Jail or in the San Bernardino County Jail for a period of not more than six (6) months, or by both such fine and imprisonment."

Petitioner was sentenced in accordance with these sections of the Redlands Ordinance Code after receiving a fair trial. As the record shows, no presumption was authorized by the ordinance or received as evidence to convict him. There is no legal or factual support for his claim that the judgment rests upon an unconstitutional presumption.

The Provisions Asserted to Be Invalid Are Severable.

Petitioner was convicted and sentenced in accordance with valid provisions of the Redlands Ordinance Code. These provisions are separate from the sections he contends are contrary to the Fourteenth Amendment of the United States Constitution.

Section 0217 of the Redlands Code provides:

> "Section 0217. PARTIAL INVALIDITY. If any chapter, article, section, sentence, clause or portion of this Code is for any reason held to be invalid or unconstitutional by any court, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof."

When the legislative body declares its intent, by a severability clause, that each part of its enactment stand or fall on its own merits, considerable weight is given such a clause. (*People v. Commons*, 64 Cal. App. 2d 925, 148 P. 2d 724, 729; *Lowe v. City Council of Augusta*, 45 Fed. Supp. 143). The rule is well settled, that, where a severability clause is provided, the valid portions of an ordinance will be upheld if the remaining portion is severable and constitutes a completely operative expression of the legislative intent. *Bacon Service Corp. v. Huss*, 199 Cal. 21, 32 (248 Pac. 235).

In *Carter v. Carter Coal Co.*, 298 U. S. 238, 338, 80 L. Ed. 1160, 1203, this court determined that certain provisions of the National Recovery Act were separable and said:

> "(A)ny declaration in respect of their validity or invalidity under the . . . constitution . . . will anticipate a controversy that may never become real. This being so, the proper course is to withhold any expression of opinion until expression becomes necessary."

We confidently assert that the provision violated by petitioner is a "separate, distinct and independent provision" as defined in the severability clause of the Redlands Code.

It is clear from this record that he did not attempt to bring himself within the provisions he contends are unconstitutional. He made no payment in accordance with either Section 6244 or Section 6246. Only Section 6225, prohibiting overtime parking and subject to the same punishment as other misdemeanor offenses, was applied to him. The constitutionality of Section 6225, standing alone, is unquestioned, and the judgment based upon the trial court's finding of a violation of this municipal law is proper.

Conclusion.

This petition makes the broad charge of unconstitutional encroachments upon the entire population of a municipality because the petitioner was tried and convicted of parking illegally.

Although his procedural rights were meticulously protected through arraignment, representation by counsel, the hearing of a motion to dismiss, entering of his plea, waiver of jury, court trial, proper sentencing and appeal, petitioner accuses the city of having the attitude "that if is too much of a nuisance to grant a trial to one charged with a minor traffic offense . . . the traditional contention of over-zealous police authorities." (Pet. p. 10).

Because he cannot show an improper application of the city parking law, petitioner premises his entire argument upon certain unrelated sections of the code which were not alleged in the complaint or applied by the court. These sections are the common provisions allowing overtime parkers to deposit sums of money and discharge their citations. There is no conclusive presumption of guilt raised in these sections. There is nothing in them to prevent any person from contesting the validity of the ordi-

nance or proving his innocence. The fundamental rule of construction in favor of constitutionality and the doctrine of separability compel the conclusion that the Redlands ordinance was properly applied to the petitioner.

For these reasons, no writ of certiorari should issue to the Appellate Department of the San Bernardino Superior Court to review its opinion affirming the lower court's judgment.

Respectfully submitted,

EDWARD F. TAYLOR,
City Attorney,
City of Redlands,
Attorney for Respondent.